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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Performance Measurements and
Reporting Requirements
for Operations Support Systems,
Interconnection, and Operator Services
and Directory Assistance

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CC Docket No. 98-56
RM-9101

REPLY COMMENTS OF SPRINT CORPORATION

SPRINT CORPORATION

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REPLY COMMENTS OF SPRINT CORPORATION

Sprint Corporation hereby submits its reply to comments of other parties in the above-captioned proceeding.

I. INTRODUCTION AND SUMMARY

It is not surprising that many large LECs object to the Commission's proposal to adopt model performance measurements and reporting requirements. What is something of a pleasant surprise, however, is that after placing their legal and policy arguments to one side, the major ILECs essentially acknowledge the substantive soundness of many aspects of the Commission's proposals. To be sure, they variously object to particular proposed measures as unnecessary or unduly burdensome, and suggest modifications to others. However, it is fair to say that, by and large, both the ILEC and CLEC industries seem to be talking from the same page despite their areas of disagreement.

Sprint renews its request that the Commission adopt its proposals, not as models to be followed or modified by the states as they see fit, but rather as binding rules that apply nationwide. Such binding rules will lower costs and speed implementation for ILECs and CLECs alike. The Commission clearly has the requisite authority to prescribe

such rules. However, if the Commission remains reluctant to exercise that authority at this time, it should at least adopt the suggestion of GSA that the model should become binding within one year in any state that has not adopted its own rules by then.

The benefits from these proposed requirements clearly outweigh the costs. The proposed measurements and reports are clearly needed by the CLEC industry. The cost burdens on ILECs of implementing these requirements are small, and the Sprint ILECs are already in the process of implementing the majority of the requirements proposed by the Commission.

Sprint urges the Commission to require the measurements and reporting to be performed on a geographically disaggregated basis – something smaller than a state or LATA, but larger than a central office. The best alternative is simply to allow the ILECs that have established their own internal subdivisions, such as regions or districts for internal purposes, to use those for these requirements as well. For ILECs that have not established such subdivisions, MSAs may be an appropriate default. And reports should be submitted monthly, not quarterly as some RBOCs propose.

II. THE PROPOSED MEASUREMENT STANDARDS AND REPORTING REQUIREMENTS SHOULD BE PROMULGATED AS RULES, NOT MODELS

The other CLECs are in agreement with Sprint (Comments at 3-5) that performance measurements and reporting requirements should be adopted as binding, nationwide rules, rather than as mere models that the states can adopt (or not), or amend,

as they see fit.¹ As many of these commentators point out, national rules will lower the costs for ILECs – that might otherwise have to develop different reporting systems for each state in which they operate, even for functions that are conducted on a centralized, multi-state basis – and for CLECs, who would otherwise be faced with the burdensome task of developing systems to evaluate the different measurements categories and reporting requirements in each of the states where they operate, and who must incur the considerable costs of litigating these issues in every state (see WorldCom at 5).

These parties also share Sprint's view that relying on state proceedings to promulgate standards may result in no binding standards at all or, even under the best case assumption, a considerable delay in the promulgation of such standards, as the states initiate, conduct and complete proceedings on whether to adopt the Commission's model. AT&T points out (at 14) that most states have not yet begun proceedings on performance measurements, and describes (n.10 at 14) the time and resources it takes to finalize such requirements in states that are conducting such proceedings.

Moreover, having nationwide binding rules will ensure that, over time, it will be far easier to implement changes in rules that may be necessary to reflect changed marketplace conditions. As Sprint pointed out in its initial comments (at 8), given the infancy of local competition today, it is likely that new measurement categories will be needed. On the other hand, when competition truly takes hold, fewer measurement

¹ See, e.g., ALTS at 2 (stating that the Commission clearly has the authority to issue binding rules, but acquiescing in the model approach initially if that would speed the promulgation of the final Commission action); AT&T at 13-17; CompTel at 3-9; LCI at 2-7; MCI at 4-6; and WorldCom at 4-6.

categories or less frequent reporting may be needed than is now the case. WorldCom (at 5-6) makes the apt observation that with a single set of nationwide rules, the Commission could readily amend those rules to reflect the need for greater or less regulatory activity, as the case may be, whereas under the model approach, binding rules could be changed only on a state-by-state basis, at considerable cost, in both time and resources, to the industry.

Many of the parties that favor the "model" approach nonetheless recognize the need for uniform measurement standards and reporting requirements on a nationwide basis. GTE, whose ILECs operate in 28 states, states that uniform performance measures and reporting requirements would enable its ILECs "to track and report information more efficiently" while unrelated performance measures and reporting requirements in its states would mean that "ILEC system programming and distribution costs would increase substantially." The Texas PUC acknowledges (at 9) that a consistent methodology for measuring the ILEC's action "will immensely assist regulators... ." The Washington UTC recognizes the value of enabling states to compare the performance of their ILECs with ILECs in other states (at 6, emphasis added):

This would provide states important information to enforce nondiscriminatory performance and make sure that not only does the incumbent treat its competitors as well as it treats itself, but that service quality levels are reasonable. It is important to have uniformly collected and homogeneous data for such analysis.

Without uniform guidelines, statistically significant analysis crossing jurisdictional boundaries would be confounded.

And the PUC of Ohio states (at 3-4) that it is “imperative that meaningful and adequate performance measurements and reporting requirements be implemented by the states.”

The PUCO also characterizes (at 4) the Commission’s proposed model as “extremely helpful” to the states.

Given the recognition (even by those who support the model approach rather than binding rules) of the desirability of uniformity, given this Commission’s stated need in evaluating §271 applications to look at RBOC OSS performance across state boundaries,² and given the obvious interest that state and federal regulators share in minimizing costs that must ultimately be borne by consumers, the case for binding nationwide rules is overwhelming. At the very least, if the Commission decides to refrain from adopting binding rules at this time, it should heed the suggestion of GSA (at 14) that the Commission should make its model rules mandatory in any state that has not adopted its own rules within a year after the Commission’s decision in this docket.³

Some of the RBOCs argue against even a “model” approach, claiming there is no need for any Commission action in this regard and that this is a matter best left to

² See, Sprint Comments at 4.

³ GSA, in this regard, would also have the Commission establish minimum performance benchmarks for each performance measure that would become binding in such states after one year. As discussed in its initial comments (at 12-13), Sprint does not believe the Commission should engage in setting performance benchmarks at this time, but instead should leave it to the states to do so, at least in the first instance. GSA (at 7) also refers to its need for “uniform service quality in every state....” However, such performance benchmarks are likely to vary from one state to the next and vary within a state as among different ILECs, because of the differences in geography (population density, terrain, etc.) in the different states and in the operating regions of different ILECs within a state.

bilateral negotiations and state arbitration proceedings.⁴ By their very nature, however, performance measurements apply as between an ILEC and all of its CLEC customers. It simply is illogical to rely on a bilateral process for measures that are, by their very own nature, multilateral. The fact that the CLEC industry, every state that filed comments with the Commission, and two major ILECs (Sprint and GTE)⁵ all recognize the need for either FCC or state-prescribed rules, suffices to demonstrate that bilateral negotiations are simply not an appropriate means of achieving consistent performance measurements and reporting requirements. The fact that some of the large ILECs take a different view is simply a reflection of their market power and their consequent ability to dominate the negotiating process.

In arguing (at 9) that no measurement (or reporting thereon) should be required unless or until there is proof that discrimination has in fact occurred with respect to the particular activity in question, BellSouth is attempting to create a classic chicken-and-egg problem. Unless the ILECs' OSS performance is measured and the results of their performance is reported to CLECs, it would be impossible for CLECs to prove (or perhaps even suspect) that an ILEC has engaged in discriminatory conduct. BellSouth's argument is akin to saying that no party to civil litigation should have discovery unless it can prove in advance that discovery will lead to admissible evidence.

⁴ See e.g., Ameritech at 9-10; BellSouth at 3; and U S West at 5.

⁵ Moreover, SBC (at 2) seems to acquiesce in some form of Commission action.

The argument of some RBOCs⁶ that the Commission has no legal authority to take any action with respect to OSS performance measurements and reporting requirements are wide of the mark. Sprint is confident that when the Supreme Court reviews the Eighth Circuit's decisions in the Iowa Utilities Board case this fall, it will conclude that the Act clearly gives the Commission plenary jurisdiction over all aspects of local interconnection and competition. But even under the Eighth Circuit's decision in the Iowa case, the Commission still has full authority to act to establish nationwide binding rules regarding this subject matter. AT&T (at 8-13) and CompTel (at 10-13) fully respond to the RBOCs' contrary arguments, and Sprint endorses their legal analysis.

Several RBOCs⁷ and USTA (at 10-15) challenge both procedurally and substantively the Commission's authority even to issue "model" rules. Given the Commission's authority to issue binding rules, it clearly has implicit authority to take the lesser step of issuing a non-binding model, for the states to follow as they wish. But the best way to avoid future debate over the significance and effect of the "model" rules is simply to make them binding.

III. THE BENEFITS FROM THE COMMISSION'S PROPOSALS CLEARLY OUTWEIGH THEIR COSTS

As Sprint discussed in its initial comments (at 8-10), with relatively few minor exceptions or modifications, Sprint fully supports the Commission's proposed measurement categories and reporting requirements. Since submitting its comments,

⁶ E.g., Ameritech at 6-11; and BellSouth at 2-4.

⁷ Ameritech at 11-14; BellSouth at 4-5; and U S West at 17-22.

Sprint has had occasion to refine its views on measurements relating to network interconnection (trunk blockage, collocation, etc.). It is in the process of sharing its views with other members of the Local Competition Users Group (LCUG) and hopes that LCUG, as a group, will endorse its network interconnection measurements.⁸ These proposed measurements are consistent with the Commission's proposals in the NPRM with one exception: database updates should be measured not only for 911/E911 databases (as the Commission proposed), but also for the line information databases (LIDB) and the directory assistance databases as well.

Sprint is acutely aware of the need to ensure that the cost-benefit analysis of performance measurement and reporting requirements is a positive one, because Sprint will be affected by whatever actions are taken by the Commission (or the states) both as a CLEC and as an ILEC. Given these internally conflicting interests, Sprint, as a corporation, has no interest in imposing measurement and reporting requirements on ILECs that do not serve a legitimate business need of the CLECs, and has no interest in requiring tasks to be measured or information to be reported in ways that are unduly burdensome to the ILECs.

Sprint strongly believes that the measurement categories and reporting requirements proposed by the Commission (particularly with the modifications Sprint has suggested) are critically needed by the CLEC industry without being unduly costly or burdensome to ILECs. The Sprint ILECs, in fact, are in the process of implementing

⁸ If and when LCUG, as a group, agrees on network performance measurements, the LCUG members will submit them in the record of this proceeding.

performance measurement processes that are essentially consistent with the Commission's proposals. Sprint has directed the senior management of its Local Telephone Division (LTD) responsible for CLEC service performance to develop and implement the necessary processes and functionality required to measure and report on LTD's performance in providing services for resale, UNEs and interconnection to CLECs. An interdepartmental team has been formed to coordinate the activities related to such implementation, and Sprint LTD has budgeted the funds it believes are necessary to fully implement these requirements.

BellSouth complains (at 6) that the costs of implementing the Commission's proposals are "real", but fails to quantify them. In fact, the implementation costs for ILECs should be minor. Bell Atlantic (at 2) estimated its costs at \$3.5 million, while Ameritech (at 16) appears to estimate that its incremental implementation costs would be \$2.5 million.⁹ These estimates are consistent with Sprint LTD's estimates of its own costs. When placed in context, these costs are modest indeed. Bell Atlantic's estimate amounts to only nine cents for each of its 39.7 million access lines, and Ameritech's estimate amounts to only 12 cents per access line.¹⁰

⁹ Ameritech stated (*id.*) that existing incremental costs of "wholesale performance measurements" (a term it fails to define) is \$2.5 million and that the Commission's proposals would "double these costs." Thus, it would appear that implementing the Commission's proposals would add \$2.5 million to Ameritech's existing \$2.5 million in incremental costs.

¹⁰ Access line data are taken from 1997 ARMIS reports.

The Commission should understand that this is a normal cost of doing business. Sprint suspects that the ILEC industry has already spent this much or more in developing performance measurement and reporting systems for their IXC access customers. When a vendor deals with large-scale customers, as the ILECs do with respect to the IXCs for access, those customers expect to see periodic "report cards" on how the vendor is doing. This is all the more true when in markets where there are competitive sources of supply, so that the customer can compare one vendor's performance with another. Thus, developing performance measurements for commercially important functions and reporting on performance, is not intrusive regulation or, as BellSouth would have it, "micromanage[ment]" by the Commission.¹¹

The reason why government action is needed here to establish these measurements and reports, rather than relying on the vendors to do so voluntarily, is easily understandable. The ILECs' provision of services to CLECs is not an ordinary commercial relationship. First, the ILECs are essentially monopoly providers of service, and thus lack the normal incentive of a competitive enterprise to be sensitive to their customers' needs (as evidenced by the objections of many ILECs in this proceeding). Second, CLECs are purchasing services, UNEs and interconnection from ILECs in order to compete with them. Thus, ILECs cannot be expected to volunteer more than is required of them in dealing with their CLEC customers. However, the law requires them to provide interconnection, resale and UNEs to CLECs, and the standards and reporting

¹¹ BellSouth at 1.

requirements at issue here are necessary to ensure that they do so in a lawful, non-discriminatory fashion.

In this regard, it is significant that even the most strenuous opponents of Commission action essentially acquiesce in the substantive reasonableness of the proposed requirements (though, to be sure, they object to, or seek modification of, some of the proposed measures). For example, U S West – one of the RBOCs that favors reliance on bilateral negotiations and opposes even a Commission “model” approach – refers (at 6) to the LCUG framework (on which the Commission’s proposals were largely based) as having become “more acceptable to U S WEST as one designed to and potentially useful in assessing discrimination” and states that earlier this year it “agreed to work with CLECs toward adoption of performance measurements based upon the LCUG framework.”

IV. GEOGRAPHICAL LEVEL, SCOPE AND FREQUENCY OF REPORTING, AND RELEVANT INTERFACES

One important issue raised by the comments of other parties is whether OSS measurements should be reported on a statewide level, or on a smaller basis, and if a smaller geographic unit is to be employed, what the appropriate reporting unit should be. Several ILECs favor statewide reporting,¹² and a few parties favor reporting on the basis

¹² See Ameritech at 18-19; Bell Atlantic at 7; BellSouth at 16; GTE at 5-6 and U S West at 26.

of LATAs.¹³ Other parties agree with Sprint that the appropriate level of geographic reporting should be smaller than a state or LATA but bigger than a central office.¹⁴

The difficulty with statewide reporting (except for a LEC that may serve only a limited portion of a state) or even LATA-wide reporting (in states where LATAs encompass large geographic areas), is that measuring and reporting on the basis of such large geographic areas can mask underlying differences in performance such that it is impossible to determine whether parity and nondiscrimination actually exist. For example, if local competition exists only in one metropolitan area of a state, statewide measurement and reporting could obscure the fact that even though the ILEC is, on a statewide basis, providing parity of treatment to the CLEC, it may be providing significantly superior performance to its own retail customers in the metropolitan area where competition is occurring, a level of performance that is offset by below-average performance in other parts of the state. In this regard, U S West's observation (at 26) that its service region "is vast and in many areas sparsely populated," supports Sprint's position rather than U S West's. It is only natural to expect U S West to take longer to install or repair circuits in, for example, the remote areas it serves in southern Utah than to do so in Salt Lake City. But it is in Salt Lake City where competition is more likely to

¹³ See e.g., PUCO at 5; GSA at 12-13 (but would use Non-Associated Independent Areas for ILECs other than the RBOCs).

¹⁴ See WUTC at 8, WorldCom at 10-11; SBC at 3; and AT&T at 34.

occur, and what CLECs need to know is whether they are receiving parity of treatment in Salt Lake City where they compete.

BellSouth (at 16) claims that it does not measure its performance on a more disaggregated basis than statewide. However, at least one of the states where BellSouth operates – Tennessee – imposes more granular performance standards and reporting,¹⁵ and Sprint believes that BellSouth complies with the obligations of that state. Furthermore, based upon its own ILEC experience, Sprint is highly dubious of BellSouth's claim that it does not keep performance data in its other states on a more disaggregated geographic basis. Sprint does so because it is important to know how well it is doing in various regions within a state so that it can evaluate its personnel and its allocation of resources within these smaller geographic units. Sprint would expect every other well-run business to do likewise.

Thus, Sprint again urges the Commission to require measurement and reporting on the basis of geographic units that are larger than each central office, but smaller than a state or LATA. Using a particular measure – such as the MSA favored by WorldCom – that may not have any relationship with the way ILECs currently keep records could impose additional costs and burdens on ILECs, by requiring them to identify activities and then keep track of such activities on a different basis than they have previously employed. Although Sprint would not object to using the MSA as a default measure, ILECs that currently track and report (whether externally or internally) on their

¹⁵ See §§1220-4-2-.34 through .42 of the Tennessee PSC's Rules, setting exchange-level performance standards for various functions and requiring reporting thereon.

performance in smaller geographic units than a state or LATA should be able to continue to use those units. This position is supported by WUTC (at 8), AT&T (at 36-37) and, with one exception, by SBC (at 3).

SBC's proposed exception to less-than-statewide reporting warrants thoughtful consideration by the Commission. SBC argues that where the particular OSS function is not differentiated geographically, such as preordering, ordering, billing, operator services and directory assistance, the measure should be reported on a statewide basis. Similarly, with respect to the scope of reporting, where a system function is performed indiscriminately for the ILEC's and the CLEC's customers, reporting should be combined instead of separated as between these categories of customers. In a similar vein, Ameritech claims (at 16-17) that its operator services and directory assistance calls cannot be identified by source (i.e., as between CLEC and incumbent customer calls) but instead are handled in the same queue on a first-come-first-served basis regardless of how they are branded and regardless of whether they are received on common or dedicated trunks. Ameritech argues (at 17) that reporting answer times for these functions at the level sought by the Commission would require substantial new software and equipment, and would in fact create the ability to discriminate where it presently does not exist.

Sprint believes these points have considerable merit and that, as a general principle, if a particular function is performed by an ILEC in such a way that it is inherently impossible to discriminate as among different CLECs or as between the CLEC and the ILEC or the ILEC's affiliate, then perhaps the measurement should not be required at all. Likewise, if a particular function is truly performed at a statewide (or

even multi-statewide) basis, then it may be impractical to require the geographic level of reporting Sprint here advocates. However, Sprint believes that it may not be possible, in the abstract, for the Commission to determine whether and how many measurements actually share these characteristics. Different ILECs may perform the same function differently, and even though it may be impossible for one ILEC to discriminate, the same might not be true for another ILEC. For example, an ILEC may have a centralized center to receive incoming calls from customers and CLECs for functions such as ordering and repair. However, unless the ILEC uses a single number (e.g., a toll free number) to handle all such inquiries, they may not in fact be handled in the same queue. Using different call numbers for the CLEC, on the one hand, and the ILECs' own customers on the other, or even different calling numbers within the ILEC region (e.g., a different local number in each exchange), could allow the ILEC to trunk the calls to the centralized facility differently and thus be in a position to differentiate the quality of service offered as between its own customers and the CLEC.

Thus, for purposes of this proceeding, Sprint urges the Commission to adopt the more geographically disaggregated reporting requirements discussed above. However, to the extent that the Commission's standards become binding rules (as Sprint hopes they will), the Commission should consider case-by-case waivers of those rules to meet situations, like those described by SBC and Ameritech, for which the general rule would serve no apparent purpose. Under this procedure, the burden would be on the ILEC to demonstrate that it has no power to discriminate with respect to a particular function and cannot feasibly report its results on a small geographic unit. Such waivers petitions

should be put on public notice so that the affected CLECs would have an opportunity to comment, and any waivers that are granted should expire after a certain period of time (e.g., a year) so that the ILEC must demonstrate periodically that its procedures have not changed. This outcome balances the need for the general rules necessary to ferret out possible discrimination with the interests of the ILECs in not being burdened with requirements that, for particular ILECs and in particular instances, may serve no beneficial purpose.

With respect to the scope and manner of reporting, Sprint opposes TCG's proposal (at 19) that ILECs should report separately on performance provided to their ten largest commercial clients. Since the identity of these clients may change from one geographic reporting unit to the next, and may change from time to time, keeping track of this additional item of data could add substantially to the burdens on ILECs, without any clear offsetting benefit to CLECs. Furthermore, contrary to TCG's assertion (at 19), reporting on the ILEC's ten largest customers was not part of the Commission's proposal in paragraph 39 of the NPRM.

With respect to the proposed requirement that the ILEC report on performance given to its CLEC affiliates, Ameritech complains (at 19-20) that its affiliates only provide limited and specialized services. That is not a reason for dispensing with the requirement altogether, because other ILECs may have CLEC affiliates that engage in far more extensive operations. It simply means that Ameritech may have little or nothing to report in that instance.

Although Sprint may be misconstruing its comments, GSA seems to suggest (at 7-8) that the ILEC reports should be available to end users, as well as CLECs. Sprint would object to such a requirement. Of course an end user such as GSA can reasonably expect performance information from its own service provider. However, the information here in question is intended to monitor an ILEC's performance for purposes of disclosing possible instances of discrimination as against CLECs in general, or particular CLECs, and is not intended to illuminate the quality of service provided to particular end users.

With respect to reporting intervals, Sprint strongly disagrees with those RBOCs¹⁶ who argue that quarterly reports should suffice. If an ILEC is engaging in a pattern of discrimination, CLECs must be able to detect such patterns promptly. Quarterly reports simply do not enable them to do so. Moreover, Sprint suspects there will be many instances where there are differences in performance levels that may not be due to any intentional conduct on the ILEC's part but that still cause commercial damage to the CLECs. Monthly reports will establish a mechanism for early warning problems that the ILEC itself, or in conjunction with the CLEC can work to overcome, so as to bring the ILEC's performance into parity promptly without creating substantial business harm to the CLEC.

¹⁶ E.g., U S West at 33; and Ameritech at 85.

Sprint agrees with those parties who argue that performance reporting should relate only to CLECs that use electronic interfaces that the ILECs have established.¹⁷ ILECs cannot be expected to provide the same performance with respect to CLECs who choose to use manual rather than electronic processes to interface with the ILEC. Such work involves manual input of data by the ILEC which inevitably slows down the ILEC's process, and increases opportunity for human error to affect the results as well (e.g., transposition of digits, etc.). Sprint suspects that CLECs who choose not to use electronic interfaces will be sufficiently small in the scope of their CLEC activities that they are likely to have little interest in ILEC performance measures in any event. However, if the ILEC itself insists upon a manual interface, rather than an electronic interface, then Sprint agrees with MCI (at 13-14) that performance using such interfaces must be measured.

Sprint disagrees with Ameritech's argument (at 20-21) for reciprocal reporting for CLECs. It is only the ILECs' existing market power that would enable them to discriminate, and thus that gives rise to the need for performance measurement and reporting. CLECs depend on ILECs, but ILECs do not depend on CLECs to any degree that is commercially significant. If it should happen that a particular CLEC gains enough of a market position that it has the power to discriminate as a successful business strategy, then Section 251(h)(2) of the Act enables the Commission to treat that carrier as an ILEC. Until such time as those market conditions in fact emerge, however, there is

¹⁷ E.g., Ameritech at 20.

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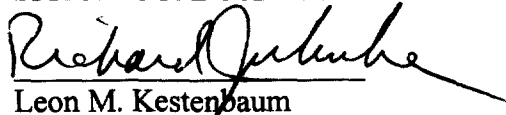
simply no business-need predicate for the reciprocal obligation Ameritech seeks to impose on CLECs.

V. OTHER ISSUES

Sprint adheres to its positions that the Commission should not endeavor, in this proceeding, either to adopt default performance benchmarks or to attempt to adopt a system of self-executing penalties for discrimination or non-parity. With respect to the latter, however, Sprint does agree with MCI (at 27-28) that proposals of some ILECs for a system of "credits" gained for good performance in one or more areas that could be offset against poor performance in other areas is unwise and could lead to targeted discrimination. Moreover, such a system of "credits" could induce some ILECs to urge this Commission or states to adopt additional performance measures and/or benchmarks that are "soft pitches" – performance measures that they know they can easily meet, but which may be of little commercial value to CLECs, simply to build up a reservoir of credits that can be used to offset poor performance in areas that are commercially significant.

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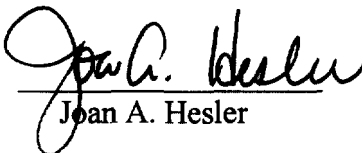
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